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ARTICLES

Dower in history and its significance in Islamic law

The Emergence of Plantation Labour in Bengal: A historical and legal study

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Inheritance of Orphan Grandchildren under Islamic law of Succession: A study of the impact of section 4 of the Muslim Family Laws Ordinance, 1961

পঞ্চম জাতীয় সংসদে গঠিত কতিপয় গুরুত্বপূর্ণ কমিটি: একটি পর্যালোচনা

বাংলাদেশের শিকস্তি ও পয়স্তি আইন : একটি পর্যালোচনা

ইসলামে মোহরানার অধিকার ও বাংলাদেশের আর্থসামাজিক প্রেক্ষাপট : একটি পর্যালোচনা

সাইবার ক্রাইম : আইন প্রয়োগ, সমস্যা ও উত্তরণের উপায় অনুসন্ধান

শিশু নির্যাতন এবং শিশু অধিকার : প্রেক্ষিত বাংলাদেশ

বাংলাদেশে টিপাইমুখ বাঁধ এর প্রভাব : একটি আইনী পর্যালোচনা

Abstract on the Project Legal Rights of the Child: Policy and Enforcement in Bangladesh, 1995

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Inheritance of orphaned grandchildren under Islamic law of succession: A study of the impact of section 4 of the Muslim Family Laws Ordinance, 1961.

Muhammad Ekramul Haque*

Introduction

The dilemma of inheritance of grandchildren from the pre-deceased child is one of the most critical areas of Islamic law. According to the classical interpretations of Islamic law any son of the deceased in general excludes such grandchildren. However, many states brought certain changes into the existing format of Islamic Law of succession so as to shield such grandchildren from total exclusion. Egypt, Tunisia, Syria, Morocco, Pakistan and Bangladesh are remarkable for bringing changes in this particular area. Pakistan brought a significant change in 1961 by section 4 of the Muslim Family Laws Ordinance (MFLO), which is a milestone event in the history of reformation of Islamic law. In Bangladesh the same law was adopted through the promulgation of the 'Laws Continuance Enforcement Order, 1971'.¹ It seems to be the most drastic change that has been ever made in any legal system of the world in the field of Islamic law of succession as it affects the whole structure of Islamic Law of succession. Except Bangladesh no other country has adopted this change that initially took place in Pakistan. Interestingly, this law has faced many judicial challenges in Pakistan since its promulgation. But, in Bangladesh, it has not become yet focus of academic discussion or judicial interpretation.

The focal objective of this article is to analyze the provisions embodied in section 4 of the MFLO 1961. In doing so appropriateness, correctness and justification of such law will be discussed. The impact of this law will also be examined from different dimensions as well as the consequences of its application.

Since 1961, from the date of adoption of this Ordinance there are many persons who supported it and also many others who have opposed the law seriously. Many jurists and writers termed it as a conflict between traditionalists and the modernists. The jurists who opposed it have been popularly portrayed as 'traditionalists' and the 'supporters' of this law have been termed as 'modernists'. But I differ with this divisional approach as I

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¹ It was issued on 10 April 1971 that says '... all laws that were in force in Bangladesh on 25th march, 1971 shall subject to the proclamation aforesaid continue to be so in force with such consequential changes as may be necessary on account of the creation of the sovereign independent state of Bangladesh formed by the will of the people of Bangladesh'.

think that it should be discussed academically following the principles of Islamic *sharia* law. The truth that will ultimately come out should be acceptable to all instead of awning or illogical adherence to any opinion following any one-sided approach. Professor Serajuddin has rightly pointed it out that 'It will however, be wrong to assume that only the traditionalists are opposed to orphaned grandchildren's inheritance'.² He adds that 'Justice Aftab Hossain, an opponent of section 4 of MFLO, is well-known for his liberal and enlightened views on *Sharia* law'.³ Again, 'Herbert J. Liebesny, an internationally acclaimed scholar on Islamic law, thinks that section 4 is contrary to the *Shariah* law'.⁴ Anderson has also shown that it upsets the whole structure of Islamic law of succession.⁵ Thus, instead of terming some as 'traditionalists' or 'modernists' the law needs to be discussed rather dispassionately.

Another objective of writing this article is to initiate an academic discussion and to attract as well the practitioners and judges to interpret this from different angles. Because, rightly guided judicial activism can ensure making apt laws by setting precedent, giving guidelines for legislative formulation and reshaping the existing laws in the shade of appropriate interpretation.

The problem of the orphaned grandchildren under Sharia and Section 4 of the MFLO 1961:

Due to the two fundamental principles of Islamic law of succession, exclusions based on hierarchy of degree and nearness of relationship, under certain circumstances, the children of the predeceased child of a deceased person could not get property under *sharia* law of inheritance. For example, if someone dies leaving one son and son's son from another predeceased son, then according to the *sharia* law of inheritance the son will get the entire property and the son's son will be totally excluded from inheritance. It seems to be an adversity caused to the descendants of the predeceased children.

Thus, in order to remove the sufferings caused to such orphaned grandchildren section 4 of the Muslim Family Laws Ordinance, 1961 was passed which says—

In the event of the death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stirpes receive a share

² Serajuddin Alamgir Muhammad, *Shari'a Law and Society Tradition and Change in the Indian Sub-continent*, Asiatic Society of Bangladesh, 1999; p.89.

³ Ibid.

⁴ Ibid. pp. 89-90.

⁵ Anderson, J. N. D., *Recent reforms in the Islamic Law of Inheritance*, 357, as cited by Serajuddin Alamgir Muhammad, *Shari'a Law and Society Tradition and Change in the Indian Sub-continent*, Asiatic Society of Bangladesh, 1999; p.90.

equivalent to the share which such son or daughter, as the case may be, would have received if alive.

This law instead of identifying the actual cases of exclusion generalized all such cases and provided a new scheme of distribution of the property importing the concept of the doctrine of representation into the corpus of Islamic law of inheritance. Thus, according to section 4 whether a said orphaned grandchild is excluded actually under existing interpretations of *sharia* law or not, will get the property under the new scheme. According to this new scheme, such a grandchild will get the portion of his/her deceased father/mother what he/she would have received if alive.

Background of enacting section 4 of the MFLO 1961: An examination of the justifications made by the 'Commission':

This law was in fact passed as a consequence of the Report of the Commission on Marriage and Family Laws. On the 4th of August 1955 the then Government of Pakistan formed a seven member Commission on Marriage and Family Laws to analyze the family law provisions with special emphasis to the protection of women's rights. It is evident, technically speaking, from the terms of reference⁶ that the Commission was not authorized to make the comments regarding the problem of succession of orphaned grandchildren generally. However, the Commission made its suggestion for the incorporation of representational rule in cases of succession of the orphaned grandchildren. The points and suggestions made out by the Commission are analyzed below:

Basis of exclusion: As regards the basis of exclusion of the children of a pre-deceased son or daughter the Commission mentions that there is no Qur'anic verse or Hadith establishing exclusion of the said grandchildren. It is argued that the existing rule of exclusion has in fact been taken from the customs of then Arab society before the advent of Islam. Maulana Haq⁷ has opposed this contention and alleged that this exclusion is made based on both the Qur'an and Hadith. He has also cited the relevant verses and Hadith in support of his disputation.

The fact that must be kept in mind that Islamic law is a total scheme. A law may apparently look illogical or incomplete if it is considered in isolation from the entire scheme and other related provisions. That is why every issue is to be examined in the light of all relevant provisions of Islamic law. Apart from inheritance there are also provisions relating to will and gift under Islamic

⁶ See *The Gazette of Pakistan*, Extraordinary Published by Authority, Karachi, Thursday, August 30, 1956; Government of Pakistan Ministry of Law Notification, Karachi the 30th August, 1956, pp. 1197-8.

⁷ *Ibid.*, pp.1602-1603.

law by which a person can obtain property. Because of the typical rules of exclusion sometimes even an apparently nearer relative may be excluded and in that case we have to look for remedy elsewhere and that instruction is given in a Qur'anic verse that says—

'It is ordained for you, when death approaches any of you and he is leaving wealth, that he should make a fair bequest (*wasiyyah*) for the parents and near relatives—a duty upon the righteous.'⁸

Thus, this Qur'anic verse in fact encourages people to make a will in favour of the appropriate persons.

Doctrine of representation: The Commission as has imported the concept of 'representation', is unknown to Sunni law of succession. According to Islamic principles, every one gets the property in his or her own capacity subject to the rules of exclusion. However, the Commission also equated the case of grandchildren with that of the grandfather and argued for the application of the representational rule. The Commission observes that 'as the right of representation entitles a grandfather to inherit the property of his grandsons even though the father of the testator has pre-deceased him, why can the same principle be not applied to the lineal descendants, permitting the children of a pre-deceased son or daughter to inherit property from their grandfather'.⁹ But it does not seem to be correct and convincing, at least, for the following reasons:

1. At the death of the father, grandfather becomes the nearest one to the deceased in the line of the ascendants through the father, so he gets property based on nearness of the relationship.
2. The Commission failed to set any clear Qur'anic verse or Hadith in favour of the rule of representation; rather they relied on merely logic. But Islamic law cannot be interpreted solely based on logic or assumption without linking it with any primary authority.
3. The cases of the descendants and ascendants are not same. It has been cited by the Commission that grandfather gets property of his grandsons 'even though the father of the testator has pre-deceased him' is true in case of the grandchild as well as when it comes in the same way. With the death of the father grandfather becomes the nearest one and no bar in the way of succession remains. If some one dies leaving one son with another son's son from a pre-deceased son, then son's son does not become the nearest one unlike the true grandfather.

Qur'anic injunction regarding welfare of the orphans: The third plea taken by the Commission is that the Qur'an puts much emphasis on the welfare of the

⁸ Sura Al-Baqarah 2:132.

⁹ Supra Note 6, pp.1197-1198.

orphans. But it has not been substantiated that the doctrine of representation is the only way to ensure the welfare of the orphan children. Thus, such a direction cannot be implemented violating some other clear (*Muhkamat*) verses of the Holy *Qur'an* regarding distribution of property. For example, if some one dies leaving a son's son from one pre-deceased son and son's daughter from another pre-deceased son, then according to *sharia* son's son will get $\frac{2}{3}$ and son's daughter will get $\frac{1}{3}$. But under such a situation, SS and SD—each of them will get $\frac{1}{2}$ according to MFLO which clearly violates the *Qur'anic* verse that says—'a male receives a share equal to that of two females'¹⁰. No new rule can be deduced by way of interpretation from any *Qur'anic* verse which clearly violates another clear *Qur'anic* verse. Thus, it appears to be a highly irrational interpretation made by the Commission.

Rejection of 'will' as a solution: There is an alternative solution that was suggested by some persons before the Commission. That is to make a 'will' by the grandfather in favour of the said grandchildren. Curiously though, the report contains a long introductory note, yet it has not discussed at proper length such a great issue of obligatory bequest to examine the merits and demerits of it. Instead, the Commission merely with reference to a stray example summarily dismissed this idea terming it as a concept that fails to do complete justice.

At the time of preparation of the report by the Commission the system of obligatory bequest was successfully working in Egypt. Unfortunately the Commission rejected it altogether without making any indepth analysis of the system. The Commission gives an example that 'If a person have five sons and four of his sons pre-deceased him, leaving several grandchildren alive' then the provision of will for $\frac{1}{3}$ of the property will not do full justice. But a question may be posed easily that 'what will happen if the scenario becomes just opposite to it? Obviously, the $\frac{1}{3}$ rule of bequest then can better ensure justice towards the said grandchildren. Quantity of the property in a fractional way is in fact always relative. One-tenth property of someone may be in some cases more than the whole property of some other persons. The Commission using the word 'full' with justice creates further ambiguities. In another place of this article it has been shown that in some cases even such a grandchild gets less under MFLO than the *sharia*.

The Commission ultimately recommended the rule of representation as a solution even without making any elaborate analysis of the impact of this rule. If anyone has to suggest any change that goes against the established norms of any legal system then that must be substantiated by adequate

¹⁰ Sura An-Nisa 4:11.

logic, reason, analysis and explanation of the relevant points of law. All these things seem to be non-existent in this report. The Commission tried more to talk about giving property to the said grandchild and to justify it. The debate is not about giving property to the said grandchildren but the debate is about the process. Obviously, a formula cannot be accepted that frustrates the whole scheme of Islamic law of succession. The welfare of the said grandchildren has to be ensured discovering a mechanism within the provisions of Islamic law that can be set harmoniously with other existing principles and can rightly be called a piece of *ijtihad*.

IMPACT OF SECTION 4 MFLO 1961

Undoubtedly, section 4 is one of the major reformations done in the area of Islamic Law of Succession. The impact of section 4 of the Muslim Family Laws Ordinance, 1961 upon *sharia* law of inheritance is to be analyzed properly. This particular provision encapsulated in section 4, adversely affects certain fundamental principles of Islamic law of inheritance as are found originally in the *sharia*. Some of such instances are—

1. Violation of order of priority among different classes of heirs:

For the purpose of distribution of property of the propositus among the heirs Islamic law of inheritance classify them into three broad categories in order of priority. They are the sharers, agnatic heirs and distant kindred. The legal order of distribution among them is that the property will go to the sharers at first and the residue will be distributed among the agnatic heirs in order of priority intra class. Thus, the groups one and two may get the property at the same time one after another, since the first group as a class does not exclude the second group, rather takes precedence over the other. The heir who is grouped as distant kindred can succeed only in the absence of the heirs of the first two groups except the widower or widow. Thus, each heir of the first two groups except widower or widow excludes any distant kindred totally. In other words, a distant kindred can not get any property in presence of any sharer or agnatic heir except the widower or widow. This is the basic classification of the heirs which forms the first basis of exclusion. This order of priority is totally diminished by section 4 of the MFLO 1961. Thus, under MFLO even a distant kindred, e.g. daughter's son or daughter's daughter, gets the property with the heirs of the first and second group.

2. Violation of the fundamental principle of distribution between male and female in the ratio of 2:1 :

The Qur'an clearly declares that 'a male receives a share equal to that of two females' which is also known as *tasib*.¹¹ Thus, the son will get double of daughter's share and son's son will get double of son's daughter's share. It will not be applicable between son and son's daughter, because they do not belong to the same class and the term '*walad*' used by the Qur'anic verse either mean 'child' or 'son's child', but in the same case it can not be used for both the meaning. However, this Qur'anic principle which forms an important rule of Islamic law of inheritance has been clearly affected by the provisions of section 4. For example,

Under MFLO: male and female get equal share violating Qur'anic principle of distribution.

Heir	Share	Reasoning
Son's son (offspring of the pre-deceased son 1)	1/2 as residuary	Representing his father (PDS1)
Son's daughter (offspring of the pre-deceased son 2)	1/2 as residuary	Representing her father (PDS2)

In the above case, son's daughter is getting 1/2 in the representative capacity of her father though she is a female, whereas Qur'an clearly says about the personal capacity. Interestingly, if both of them are the offspring of the same pre-deceased son then their position under *sharia* and MFLO would be same. For example,

Both under sharia and MFLO: male is getting double share of the female.

Heir	Share	Reasoning
Son's son (of pre-deceased son 1)	2/3 as residuary	Representing his father (PDS1)
Son's daughter (of pre-deceased son 1)	1/3 as residuary	Representing her father (PDS1)

Thus, if we consider above two son's daughters, each of them in fact enjoys the same identity that is son's daughter and *sharia* also treats each of them in the same way whereas MFLO distinguishes between these two because of the application of the doctrine of representation. This is the double standard taken by MFLO towards the same kind of heir.

¹¹ This rule of 'double share for male' is applicable in cases of son and daughter, son's son and son's daughter, full brother and full sister and consanguine brother and consanguine sister.

3. Violation of the fundamental principle of hierarchy of degree:

Islamic law of succession recognizes the principle of hierarchy of degree by which nearer in degree excludes more remote. Thus the nearness of the relationship forms the prior claim to get the property. However, this rule is not strictly applicable in Sunni school, as the daughter does not exclude the son's son, and thus it appears that this rule of exclusion is applied only in the same class of heirs. But, it is true that under *Shia* school even the daughter excludes son's son.

Under MFLO: Violation of the principle of hierarchy of degree.

Heir	Share	Reasoning
Son	$\frac{1}{2}$ as residuary	As <i>asaba</i> .
Son's son	$\frac{1}{2}$ as residuary	Representing his father (PDS), whereas he would be totally excluded by <i>sharia</i> because of the hierarchy of degree by the presence of son.

4. Creates new methodology of distribution:

Under *sharia* law, everyone gets the property in his or her own capacity. But if section 4 is applied then every child of the pre-deceased child will get the property in a representative capacity. Thus, it will create a completely new mode of distribution. The innovative line will be clear from the following example:

MFLO introduces new scheme of distribution

Heir	Share under MFLO	Share under Sharia
Son's son (of PDS 1)	$\frac{1}{2}$ representing their father PDS1, each gets $\frac{1}{4}$	All will be converted into residuary together to be divided the whole property among them equally, each gets $\frac{1}{3}$ by his independent capacity.
Son's son (of PDS 1)		
Son's son (of PDS 2)	$\frac{1}{2}$ representing his father PDS2	

In the above examples, someone dies leaving 2 son's sons from his first pre-deceased son and 1 son's son from his second pre-deceased son. *Sharia* treats them equally as each of them gets property in his independent capacity. But, MFLO distributes the property to them as the representatives of their deceased father. Thus, interestingly, MFLO has become discriminatory towards the sons of the same grade under the similar circumstance. Probably, the persons who advocated for making such a rule,

even they could not contemplate of such an anomalous situation as they always tried to portray their report based on equity and just principles.¹²

5. Unnecessary interference:

There are many cases where the orphaned grandchildren are not deprived even under *sharia* law. But, section 4 becomes applicable everywhere irrespective of their exclusion. For example, if someone dies leaving one daughter and one son's son, then according to *sharia* the daughter will get $\frac{1}{2}$ as a sharer and the rest $\frac{1}{2}$ will go to the son's son. But MFLO modifies it and accordingly, daughter will get $\frac{1}{3}$ and the son's son gets $\frac{2}{3}$. There is no logical basis for bringing such a change. The objective of the law was to save the orphaned grandchildren from deprivation, but there is no specification made in the said law that it will be applicable in cases where the orphaned grandchildren will be deprived according to the regular rules of distribution. The law has been spelt in such a way that gives the impression that as if such grandchildren are always totally deprived under the *sharia* law. But the fact is different. F. M. Kulay has made the point very clear with specific statistic. He 'argues that the concern of the orientalists and the apologetic, modern and progressive Muslims for the orphaned grandson is misplaced.'¹³ Kulay pointed out that there are 27 and leaving aside the two cases of emancipated slaves 25 possible situations in which a grandson is an heir of his grandfather.¹⁴ Out of these 25 situations, in 14 the grandson inherits the whole property excluding others totally; in 10 he inherits one-third or more; and only in one situation where there is a surviving son, whether his father or uncle, he is excluded.¹⁵ Thus importing generally the concept of representational rule upsets the whole structure of *sharia* law. Coulson rightly pointed out that 'because the Pakistani rule of representational succession by lineal descendants is absolute in its application and not confined to cases where the grandchildren would otherwise be excluded from succession, it brings about radical changes in

¹² In this connection see the Report of the Commission on Marriage and Family Laws in *The Gazette of Pakistan*, Extraordinary Published by Authority, Karachi, Wednesday, June 20, 1956, based on which MFLO was enacted.

¹³ As has been cited by Serajuddin Alamgir Muhammad, *Shari'a Law and Society Tradition and Change in the Indian Sub-continent*, Asiatic Society of Bangladesh, 1999, pp.88.

¹⁴ Ibid.

¹⁵ Serajuddin Alamgir Muhammad has cited it in his *Shari'a Law and Society Tradition and Change in the Indian Sub-continent*, Asiatic Society of Bangladesh, 1999, p.88 with reference to F. M. Kulay, "Grandsons Inheritance at Islamic Law – Much Ado About Nothing", ICLR 13 (1993), 62-3.

the structure of inheritance, affecting not only the heirs' *quantum* of entitlement but also their priorities.¹⁶

6. *It diminishes the differences between male and female heirs and also undermines the superior female heir:*

Under MFLO the son's son and son's daughter enjoy the same status, as each of them is treated as representative of his/her father and thus enjoys the status of a son. Anomalous, it is still recognizing the fundamental difference between son and daughter at the first level, but does not recognize the same in the next level. This double standard affects other heirs which sometimes even undermines the superior female heir (daughter) both in status and proportion of the entitlement in comparison with other female heirs from the pre-deceased son of inferior status. If some one dies leaving a daughter and a brother, then the daughter will get $\frac{1}{2}$ and the brother will get another half as a residuary. This *sharia* rule is still applicable. Instead of this daughter if there is a daughter from the pre-deceased son then the distribution remains same as she gets $\frac{1}{2}$ and the rest goes to brother according to *sharia*. But in the second case, according to section 4 of the MFLO son's daughter will get the whole property excluding brother totally. This is an anomaly in the sense that while daughter is not excluding brother, son's daughter is excluding him and she is getting also more property than the daughter. Thus the son's daughter is awarded with a superior status even than the daughter. If they really did not prefer any difference between male and female then paradoxical stand is seen when they give such preference still to the son's daughter only due to the reason of her being the daughter of a son. If in such a case there would be a daughter's daughter instead of son's daughter then she would not exclude brother even according to MFLO, because she is the daughter of a daughter. Thus it seems that their idea is not based on any clear standpoint and thus it resulted in a number of anomalies and contradictions.

7. *Abolishes the original status of the son's daughter as a sharer with the impact of reducing the number of 'Qur'anic heirs' (sharers) from 12 to 11:*

Under MFLO the status of son's daughter has been changed and now she is always enjoying the status of an agnatic heir representing the son and gets the residue like the son even in the absence of her male counterpart. Thus, in no case now the son's daughter will be treated as a sharer under MFLO, the heir of the first class. Because, section 4 generally applied the rule of representation in case of son's daughter and so even if she is not excluded

¹⁶ Coulson N. J., *Succession in the Muslim Family*, Cambridge University Press, 1971; p.152.

by the *sharia* still MFLO will be applicable and will confer with her the hypothetical status of her dead father. In practice, by the application of section 4 son's daughter will never get any property as a sharer in her own capacity. So, consequently, the total number of sharers now has become eleven, which is contradictory with the established number of sharers for long as twelve.

8. Violates the principle of 'Tasib':

Son's daughter is originally a sharer and by *tasib* she is converted into residuary only by her male counterpart and gets the residue. Thus, under *sharia* law according to the doctrine of *tasib* a son's daughter can never be an *asaba* in her own right without her male counterpart, whereas under MFLO she is always treated as an *asaba* in her own even in the absence of any of her male counter parts.

Following miscellaneous points are also worth mentioning here to assess the real impact of section 4 on Islamic Law of Inheritance:

- 1) Daughter's daughter and daughter's son—each of them is a distant kindred, belongs to the third category of the heirs, who are now upgraded to the first grade of heir enjoying the status of a daughter.
- 2) It reduces sometimes the property of the widow or widower unnecessarily and increases the property of daughter's children who already got property under *sharia*.
- 3) It sometimes reduces the share of the mother violating the original principles of Islamic law of succession. It also affects the father, reducing his portion ultimately.

However, the Court in Pakistan¹⁷ says that 'grand-child is not entitled to more share than what could be inherited from the parents according to Islamic law'. Again, Karachi High Court¹⁸ has in fact made the scope of application of section narrower that it is popularly believed, saying that application of this section will be limited to the cases of actual deprivation instead of general application in all cases of orphaned grandchildren.

Conclusion

To conclude, it appears that the concept of representation as has been imported by section 4 of the Muslim Family Laws Ordinance, 1961 has in itself intrinsic conflict with Islamic law of succession. It upsets the whole structure of Islamic law of inheritance. It also violates the rule of *ijtihad* as

¹⁷ *Mst. Zarina Jan V. Mst. Akbar Jan*, 1975 PLD 1975 Peshwar 252, *Regular Second Appeal No. 139 of 1967, decided on 25th July 1975.*

¹⁸ *Fikree V. Fikree Development Corporation Ltd.*, 1988 PLD Kar. 446.

an *ijtihad* cannot be done that results in violation of any Qur'anic verse.¹⁹ At the same time, it created injustice to others by concentrating justice only to the orphaned grandchildren. In doing so, it created more problems than solutions. Unnecessary interference is another great defect of this law as in many cases it provides a new scheme of distribution for the orphaned grandchildren though they were not actually deprived under the existing *sharia* law. It seems that the framers did not contemplate certain consequences of the application of this law. Thus, it can be commented easily that this law was drafted without making ample groundwork either in extent or eminence or in both. The jurists like Coulson and Anderson, who ultimately supported it, have not denied the fact that section 4 of the MFLO violates the principles of Islamic *sharia* law. Herbert J. Liebesney also thinks that it violates the *sharia* law terming it as 'the most express deviation yet introduced'.²⁰ Considering a few similarities with *Shia* principles of distribution per stripes sometimes it is wrongly argued that section 4 is based on *Shia* interpretation of succession. It is worth mentioning here that a son always excludes a grandchild even according to *Shia* law of succession like the *Sunni* laws of succession. Thus, section 4, fundamentally differs from both *Sunni* and *Shia* laws of succession.

Lastly, inheritance of Muslims in Bangladesh is a part of Muslim Personal Law and any lacuna in it obviously has to be solved following the guidelines provided by it, and not by violating the established principles of Islamic law dismantling its basic fabrics. Rather, Islamic law itself permits *ijtihad* which is to be exercised in conformity with the fundamental principles of Islamic law not by way of deviation from those laws as is done in case of section 4 of the MFLO. Even, the system of obligatory bequest finds some support from Islamic *sharia* law which considers the institution of 'will' (*wasiyyah*) as a part of the total scheme of *sharia* concerning the system of distribution of property. To face a legal problem all relevant laws must be discussed instead of just relying on the direct provisions so as to find out the probable solution within that legal system. Unnecessary incorporation of foreign elements, especially in the corpus of personal laws, is not desirable. In Bangladesh no judicial authority is found on it as yet. Undoubtedly this is an important area of Muslim Personal Law that ought to have further indepth academic scrutiny and the law may be reconstructed, if required, by necessary legislation or through judicial activism in Bangladesh.

¹⁹ It has been shown earlier that application of section 4 sometimes may result to violation of the Qur'anic principle 'a male gets a share equal to that of two females'. See supra note 11.

²⁰ Herbert J. Liebesney, "Stability and Change in Islamic Law", *The Middle East Journal* 21 (1967), 34.